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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

CALifornians for Renewable Energy, a
 California non-profit public benefit
 corporation representing California
 consumers, and its counsel, Stephan C.
 Volker,

Plaintiffs,

v.

California Public Utilities Commission,

Defendant.

Civ. No. C08-01954-JL

**PLAINTIFFS' OPPOSITION TO
 DEFENDANT'S REQUEST FOR
 JUDICIAL NOTICE**

AND

**SUPPORTING DECLARATION
 OF COUNSEL**

Hearing: August 13, 2008
 Time: 9:30 a.m.

Judge: Hon. James J. Larson,
 Magistrate-Judge

Defendant California Public Utilities Commission ("CPUC" or "defendant") filed a request for judicial notice in support of its motion to dismiss. Plaintiffs CALifornians for Renewable Energy ("CARE") and Stephan C. Volker oppose judicial notice of CARE's "Petition for Review of Decision of The Court of Appeal for the First Appellate District," in the matter *CARE v CPUC*, Docket No. S150635, which is included in defendant's request as Exhibit S. This document was not filed by the California Supreme Court, as demonstrated by the Supporting Declaration of Counsel below and by Exhibit T of defendant's request. The declaration and Exhibit T, a one-page letter from the California Supreme Court, explain that the California Supreme

1 Court refused to file the petition and returned the original petition for review to CARE
2 along with the filing fee.

3 Because the petition for review was not filed, it is *not* subject to any of the
4 authority cited in defendant' s request. Defendant' s RJN, p. 4, *citing, e.g., United*
5 *States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248
6 (9th Cir. 1992) (court' s final judgment and related *filings* subject to judicial notice by
7 the court). Accordingly, this Court should deny defendant' s request for judicial notice
8 as to Exhibit S because it is not an official document of any sort and is not on file with
9 any court.

10 Dated: July 16, 2008

Respectfully submitted,

LAW OFFICES OF STEPHAN C. VOLKER

13 By: /s/ Stephan C. Volker
14 STEPHAN C. VOLKER
15 Attorneys for Plaintiffs

16 **SUPPORTING DECLARATION OF COUNSEL**

17 I, STEPHAN C. VOLKER, hereby declare as follows:

18 1. I am counsel for plaintiffs and have personal knowledge of the following
19 matters.

20 2. On or about March 5, 2007, the California Supreme Court returned unfilled
21 CARE' s " Petition for Review of Decision of The Court of Appeal for the First
22 Appellate District" in the matter *CARE v CPUC, Docket No. S150635*, and the related
23 filing fee.

24 I declare under penalty of perjury that the foregoing is true and correct of my
25 personal knowledge, and that this declaration was executed in Oakland, California on
26 July 16, 2008.

27 /s/ Stephan C. Volker
28 STEPHAN C. VOLKER